HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION No.9810 of 2005

Between:

M/s. Sri Kanakadurga Automobiles Limited

… Petitioner

AND

Viayawada Municipal Corporation & others

… Respondents

Counsel for the Petitioner : Shri M.S.Ramchandra Rao

Counsel for respondent No.1 : Ms. G. Jhansi

Counsel for respondent No.2 : Shri S.V. Bhatt

Counsel for respondent No.3 : Shri V.S.R. Anjaneyulu

Counsel for respondent No.4 : Ms. K.Aruna

Dated: 27th September, 2006

: ORDER :

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Per C.V.NAGARJUNA REDDY, J.

This is a petition for quashing order dated 30.3.2005 issued by the Assistant Medical Officer of Health, Municipal Corporation, Vijayawada (for short, 'the Corporation') under Sections 521(i)(e)(ii), 516, 517(2)(b)(3), 622(3) and 622(4) of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') as applicable to the Corporation whereby the petitioner has been directed to shift the service station run in D.No.40-3-18/A, Kalyanam Ramarao Street, Krishnanagar, Vijayawada, to an unobjectionable place within seven days from the date of receipt of the notice.

In the affidavit filed in support of the writ petition, Sri D. Srinivasa Prasada Reddy, Director of the petitioner company has averred that on the basis of trade licence granted vide Certificate No.32/587/977, dated 31.7.2004, which was renewed on 18.2.2005, the petitioner has been carrying on the business of servicing of Honda two wheelers at D.No.40-3-18A, Krishnanagar, Vijayawada, for the last more than one year. He has further averred that before issuing the impugned order-cum-notice, the officer concerned did not give any notice or opportunity of hearing. Still further, it has been averred that the impugned order-cum-notice has been issued at the instance of the third respondent who wants to grab the site. According to the deponent, copy of the report, which is said to have been sent by the Andhra Pradesh Pollution Control Board (for short, 'the Board') vide letter dated 15.3.2005 was not made available to the petitioner and no opportunity was given to controvert the findings and observations contained therein.

In the counter affidavit filed by Sri Natarajan Gulzar, Commissioner of the Corporation, it has been averred that the service station established by the petitioner is located in residential zone, which is not permissible as per the master plan of Vijayawada. It has been further averred that the petitioner's activity is causing pollution as evident from the Board's report, dated 15.3.2005. The

contents of the report have also been extracted in the counter in order to show that the levels of noise emanating from the petitioner's activity exceed the standard noise levels. The assertion contained in the affidavit filed on behalf of the petitioner that the impugned order-cum-notice was issued without complying with the rules of natural justice has been denied.

The third respondent has also filed a counter in which the allegations made against him by the petitioner have been denied. The third respondent has averred that on account of the petitioner's activity, the residents of the locality are exposed to noise pollution.

In the reply affidavits filed on behalf of the petitioner, the assertion regarding non-compliance of the rules of natural justice has been reiterated.

We have heard learned counsel for the parties. A reading of the impugned order-cum-notice shows that it is entirely founded on report dated 15.3.2005 prepared by the Board on the basis of inspection carried out pursuant to the complaints made by the residents that the running of the petitioner's service station is causing air and noise pollution. In the affidavit filed in support of the writ petition, it has been categorically averred that copy of the report got prepared by the Board was not made available to the petitioner. Although this has been denied in the counter affidavit filed on behalf of the first respondent, learned counsel representing the said respondent fairly admitted that copy of the report of the Board was not supplied to the petitioner and it was not given opportunity to controvert the contents thereof. It is thus evident that the petitioner has been condemned un-heard.

It is needless to emphasize that it is obligatory on the part of the first respondent to conform to the fundamental principle that before passing any order adversely affecting the interest of a person, he shall be afforded reasonable opportunity to defend himself against the proposed action. This fundamental principle has been violated by the first respondent by not giving a prior notice and by not supplying a

copy of report dated 15.3.2005 of the Board, which constituted the sole basis for passing the impugned order.

In view of the above, we are convinced that the impugned order-cum-notice is liable to be quashed on the ground of violation of the rule of audi alteram partem.

As regards the assertion contained in the counter affidavit filed on behalf of the first respondent that the service station cannot be located in residential zone, it is sufficient to mention that this reason has not been enumerated in the impugned order-cum-notice and, therefore, the same cannot be taken into consideration while deciding the writ petition.

In the result, the writ petition is allowed. Impugned order-cum-notice dated 30.3.2005 is quashed. However, keeping in view the element of public interest, we deem it proper to give the following directions:

i) The Municipal Corporation of Vijayawada shall issue fresh notice to the petitioner within a period of two weeks from today.

ii) Within next two weeks, the petitioner should file reply to the show cause notice and produce evidence in support of its defence.

iii) Within next one month, the competent authority shall hear the petitioner or its representative and pass appropriate order, which shall be communicated to it at the end of one month period.

iv) If the members of public so desire, they may also apply to the competent authority for being heard before final decision is taken on the notice to be issued to the petitioner.

C.V.NAGARJUNA REDDY, J

27th September, 2006.

G.S.SINGHVI, CJ

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